LEGISLATION NO: _0373-19_____  SPONSOR: Seth Damon

TITLE: An Action Relating to Budget and Finance, Resources and Development, Naabik'iyáti' Committees, and Navajo Nation Council; Approving and advance of Supplemental Funding from the Unreserved, Undesignated Fund Balance in the amount of One Million Nine Hundred Thousand Six Hundred Ninety Four Dollars and Ten Cents ($1,900,694.10) for the 2020 Transmission Charge for the Navajo Nation’s use of Five Hundred (500) Megawatts of electricity pursuant to the Navajo Generating Station Extension Lease and underlying Transmission Agreement with the Bureau of Reclamation; Waiving 12 N.N.C. §§820 (E) and (F); Adopting the 500 Megawatts Revenue & Repayment Plan; Designating the revenues generated by the 500 Megawatts to fund the 500 Megawatts Revenue & Repayment Plan

Date posted: December 11, 2019 at 5:31pm

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DATE: December 10, 2019

TITLE OF RESOLUTION: AN ACTION

RELATING TO BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL; APPROVING AN ADVANCE OF SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF ONE MILLION NINE HUNDRED THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS AND TEN CENTS ($1,900,694.10) FOR THE 2020 TRANSMISSION CHARGE FOR THE NAVAJO NATION'S USE OF FIVE HUNDRED (500) MEGAWATTS OF ELECTRICITY PURSUANT TO THE NAVAJO GENERATING STATION EXTENSION LEASE AND UNDERLYING TRANSMISSION AGREEMENT WITH THE BUREAU OF RECLAMATION; WAIVING 12 N.N.C. §§ 820 (E) AND (F); ADOPTING THE 500 MEGAWATTS REVENUE & REPAYMENT PLAN; DESIGNATING THE REVENUES GENERATED BY THE 500 MEGAWATTS TO FUND THE 500 MEGAWATTS REVENUE & REPAYMENT FUND

PURPOSE: This resolution, if approved, will advance a supplemental appropriation from the Undesignated, Unreserved Fund Balance (UUFB) in the amount of $1,900,694.10 to pay the Nation’s 2020 Transmission Charges for 500 Megawatts of electricity pursuant to the Navajo Generating Station Transmission Agreement with the Bureau of Reclamation and establish the 500 Megawatts Revenue Repayment Plan and Fund to receive revenues generated by the 500 Megawatts and repay the UUFB advance of $1,900,694.10, pay future annual Transmission Charges and fund energy-related projects.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24TH NAVAJO NATION COUNCIL – First Year, 2019

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. _0373-19_

AN ACTION

RELATING TO BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT,
NAABIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL; APPROVING
AN ADVANCE OF SUPPLEMENTAL FUNDING FROM THE UNRESERVED,
UNDENIGNATED FUND BALANCE IN THE AMOUNT OF ONE MILLION NINE
HUNDRED THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS AND TEN
CENTS ($1,900,694.10) FOR THE 2020 TRANSMISSION CHARGE FOR THE NAVAJO
NATION'S USE OF FIVE HUNDRED (500) MEGAWATTS OF ELECTRICITY
PURSUANT TO THE NAVAJO GENERATING STATION EXTENSION LEASE AND
UNDERLYING TRANSMISSION AGREEMENT WITH THE BUREAU OF
RECLAMATION; WAIVING 12 N.N.C. §§ 820 (E) AND (F); ADOPTING THE 500
MEGAWATTS REVENUE & REPAYMENT PLAN; DESIGNATING THE REVENUES
GENERATED BY THE 500 MEGAWATTS TO FUND THE 500 MEGAWATTS
REVENUE & REPAYMENT PLAN

BE IT ENACTED:

Section One. Authority
A. The Navajo Nation established the Budget and Finance Committee (BFC) as a standing committee of the Navajo Nation Council and empowered BFC to review and recommend to the Navajo Nation Council the management of all funds and to approve Fund Management Plans pursuant to the recommendations of the appropriate oversight committee and affected Division or Branch. 2 N.N.C. §§ 164 (A)(9), 300 (A), 301 (B)(2) and (14).

B. The Navajo Nation established the Resources and Development Committee (RDC) as a standing committee of the Navajo Nation Council and empowered RDC with authority to establish Navajo Nation policy with respect to optimum utilization of all Navajo Nation resources and to make recommendations to the Navajo Nation Council for energy development agreements. 2 N.N.C. §§ 164 (A)(9), 500 (A) and (C)(1), 501 (B)(4)(a).

C. The Navajo Nation established the Naabik’iyáti’ Committee as a standing committee of the Navajo Nation Council and mandated that legislation requiring final action by the Navajo Nation Council shall be assigned to the Naabik’iyáti’ Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A).

D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102.

E. The Navajo Nation Appropriations Act, 12 N.N.C. et seq., requirements for Supplemental Appropriations from the Unreserved Undesignated Fund Balance include:

1. When the Controller of the Navajo Nation identifies additional sources of revenues above and beyond the initial or current revenue projections, supplemental appropriations may be allocated by the Navajo Nation Council. 12 N.N.C. § 820(L).

2. The Controller shall be responsible for designating recurring and non-recurring revenues. 12 N.N.C. § 820(L). Supplemental appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes and the Nation shall budget all recurring...
operating expenses, including maintenance of capital facilities, from recurring revenues. 12 N.N.C. §§ 820 (E) and (F).

3. All requests for supplemental funds shall be submitted to the Office of Management and Budget (OMB) for budget impact analysis. 12 N.N.C. § 820(M).

F. The Navajo Nation Appropriations Act further states that funds received in excess of the initial or current revenue projection shall be deposited into the General Fund Unreserved Undesignated Fund Balance unless otherwise designated by Navajo Nation Council. 12 N.N.C. § 820 (K).

Section Two. Findings

A. In June 2017, the Navajo Nation Council approved a lease with Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, Tucson Electric Power Company, Nevada Power Company d/b/a Nevada Energy and the Los Angeles Department of Water and Power (the “NGS Owners”) regarding the shutdown, decommissioning and remediation of the Navajo Generating Station (the “Extension Lease”).

B. As part of the Nation’s compensation under the Extension Lease, the Nation received the right to use (or market) 500 Megawatts (“500MW”) of electricity belonging to the Bureau of Reclamation (BOR) on the NGS transmission systems for thirty-five (35) years beginning on December 23, 2019. Extension Lease § 8(A)(i).

C. The NGS owners agreed to cover the Nation’s operation and maintenance costs related to the 500MW for ten (10) years beginning on December 23, 2019, but the Nation will be responsible for all other costs associated with the 500MW (herein referred to as “Transmission Costs” or “Capital Costs”). Extension Lease § 8(A)(ii).

D. On December 13, 2017, the Nation entered into a separate agreement with BOR and the Western Area Power Administration further detailing the Nation’s rights and obligations related to the 500MW (the “Transmission Agreement”).
E. Pursuant to the Transmission Agreement, the Nation will be billed by BOR for annual Capital Costs with payment due within thirty (30) calendar days after issuance of BOR’s invoice or by December 31st, whichever is later. Transmission Agreement, Operating Procedure 3, Section 6.1.

F. On December 4, 2019, the Nation received an invoice from BOR for the 2020 Transmission Charges (aka Capital Costs), attached as Exhibit A, in the amount of one million nine hundred thousand six hundred ninety four dollars and ten cents ($1,900,694.10); payment of the bill is due January 3, 2020. The details of BOR’s calculation of the 2020 Transmission Charge is attached as Exhibit B [Designated as confidential by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

G. Annual revenue projections for the marketing of the 500 MW in 2020 and 2021 range from $888,000.00 for 20% of the 500 MW to $7,230,000.00 for 100% of the 500 MW. Navajo Transmission System 500 MW Asset, attached as Exhibit C [Designated as confidential by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

H. This is a request for an advance from the Unreserved Undesignated Fund Balance to pay the 2020 Transmission Charges with the advance to be repaid with revenue generated from the use and marketing of the 500MW; the supplemental funding request forms are attached as Exhibit D.

I. Pursuant to its 12 N.N.C. § 820(M) authorities and responsibilities, the Office of Management and Budget has provided a budget impact analysis dated December 10, 2019, attached as Exhibit E.

J. Pursuant to the Office of the Controller’s 12 N.N.C. §§ 820 (F) and (L) authorities and responsibilities, the Controller has provided a memorandum dated December 6, 2019, attached as Exhibit F, indicating that the balance in the Unreserved, Undesignated Fund Balance is $16,817,205.00 and that revenues generated by the 500 MW are deemed recurring.
Section Three. Waiving §§ 820(F) and (L) Regarding the Restriction of Appropriations of Non-Recurring Revenues to Recurring Costs

The Navajo Nation Council hereby waives 12 N.N.C. §§ 820(E) and (F) with regard to the restriction of appropriations of non-recurring revenues to recurring costs.

Section Four. Approving the Supplemental Appropriation Advance from the Unreserved, Undesignated Fund Balance in the Amount of One Million Nine Hundred Thousand Six Hundred Ninety-Four Dollars and Ten Cents ($1,900,694.10) to Pay the 2020 Transmission Charges for the 500 MW

A. This supplemental appropriation advance of $1,900,694.10 shall be from that amount of funds that exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as determined by the Office of the Controller and to the Division of Natural Resource, Business Unit Number, New.

B. The Navajo Nation hereby approves the supplemental appropriation advance from the Unreserved, Undesignated Fund Balance to the Division of Natural Resources, Business Unit Number, New, for $1,900,694.10 to pay the 2020 Transmission Charges for the 500 MW, as set forth in Exhibit A.

Section Five. Approving and Adopting the 500 MW Revenue & Repayment Plan and Fund and Designating Revenues Generated by the 500 MW into the Revenue & Repayment Fund

The Navajo Nation hereby approves and adopts the 500 MW Revenue & Repayment Plan as follows:

A. The Office of the Controller and Office of Management & Budget shall work with the Division of Natural Resources to establish a fund, hereby called the 500 MW Revenue & Repayment Fund ("500 MW Fund"), to receive and hold any and all revenue received by the Nation for the use and marketing of the 500 MW and to fund expenditures as delineated below.
B. Any and all revenue received from the use and marketing of the 500 MW shall not be deposited in the General Fund and shall instead be designated to fund the 500 MW Fund and deposited therein.

C. The Office of the Controller shall determine an investment program for the 500 MW Fund wherein interest earnings are reinvested in the Fund.

D. The Division of Natural Resources shall work with the Office of the Controller and Office of Management & Budget to establish a Fund Management Plan governing the 500 MW Fund, for approval by the Budget and Finance Committee upon the recommendation of the Resources & Development Committee, that establishes, among other things, use of the 500 MW Fund in the following order and priority:

1. Repayment to the Unreserved Undesignated Fund Balance of the supplemental appropriation advance in the amount of $1,900,694.10;

2. Payment of the following year Transmission Charges; and

3. Funding of energy-related projects.

E. After the supplemental appropriation advance of $1,900,694.10 to the Unreserved Undesignated Fund Balance has been repaid, expenditures of the 500 MW Fund shall be limited to payment of annual Transmission Charges and energy-related projects recommended by the Division of Natural Resources and Office of the President & Vice-President and approved by the Resources & Development Committee.

Section Six. Effective Date

This legislation shall become effective in accord with 2 N.N.C. § 221(B).